

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Appellee,)	2 CA-CR 2008-0279
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CHAD LUCAS HARRISON,)	Rule 111, Rules of
)	the Supreme Court
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20080502

Honorable Frank Dawley, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Amy M. Thorson

Tucson
Attorneys for Appellee

Emily Danies

Tucson
Attorney for Appellant

BRAMMER, Judge.

¶1 Chad Harrison was found guilty by a twelve-member jury and convicted of one count each of theft of a means of transportation, third-degree burglary, criminal damage, attempted armed robbery, attempted aggravated robbery, theft of a credit card, taking the

identity of another, and misdemeanor assault.¹ The jury found the attempted aggravated robbery had been a dangerous-nature offense, and the trial court found Harrison had two or more historical prior felony convictions. The court sentenced Harrison to mitigated, enhanced terms of imprisonment, some concurrent and some consecutive, for a total term of fifteen years in prison. On appeal, Harrison asserts the state's evidence was insufficient to support the jury's guilty verdicts. He contends the court therefore abused its discretion when it denied his motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P. We disagree.

¶2 “We review a trial court’s denial of a Rule 20 motion for an abuse of discretion and will reverse only if no substantial evidence supports the conviction.” *State v. Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d 455, 458 (App. 2003). “Substantial evidence is evidence that reasonable jurors ‘could accept as sufficient to support a guilty verdict beyond a reasonable doubt.’” *State v. Ramsey*, 211 Ariz. 529, ¶ 40, 124 P.3d 756, 769 (App. 2005), quoting *State v. Davolt*, 207 Ariz. 191, ¶ 87, 84 P.3d 456, 477 (2004). Evidence is not rendered insufficient because reasonable jurors might “‘fairly differ as to whether certain evidence establishes a fact in issue.’” *State v. Tison*, 129 Ariz. 546, 553, 633 P.2d 355, 362 (1981), quoting *State v. Bearden*, 99 Ariz. 1, 4, 405 P.2d 885, 886 (1965). Rather, such evidence must be considered substantial, *Tison*, 129 Ariz. at 553, 633 P.2d at 362, because “we view the facts in the light most favorable to sustaining the jury[’s] verdict[s] and resolve all inferences against [the defendant].” *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 914 (2005).

¹Harrison had been indicted for aggravated assault with a deadly weapon or dangerous instrument. The jury found him not guilty of that charge, but guilty of the lesser-included offense of assault.

¶3 So viewed, the evidence established that Shawna C. had stopped at a convenience store at about 9:00 p.m. on January 26, 2008, and left her sedan running in the store's parking lot while she went inside. She noticed two men at the counter and saw them leave the store. She also saw one of the men place his hands on the handlebars of a bicycle outside. When Shawna walked out to the parking lot moments later, her car was gone, and she reported the theft to the Tucson Police Department.

¶4 The next morning, Harrison was driving Shawna's sedan with codefendant Zachary Waggoner as his passenger. Waggoner called out the vehicle's window to Doug Z. and offered him a ride. Doug accepted the offer and got into the vehicle, noticing that the back seat was full of what he described as bicycle parts.

¶5 Harrison told Doug the vehicle was a "G-ride," and a police detective testified this term was slang for a stolen vehicle, with the "G" signifying "grand theft auto." Although Doug had expected a ride home, Harrison stopped the car in a railroad underpass. Waggoner, who had been stabbing the dashboard with a screwdriver during the ride, held it to Doug's ear and threatened to "shove it through" unless Doug gave him money. As Doug struggled to get out the passenger-side door, Waggoner used the screwdriver to stab him in the chest and legs. After Doug escaped from the vehicle by climbing through the window, Harrison got out as well and kicked and punched Doug, telling him, "We are serious." Doug had understood this to mean the two men were serious about getting his money. Doug whistled for aid and told the men he knew someone who lived nearby, and Harrison and Waggoner got back into the vehicle and drove away.

¶6 A few minutes later, a Pima County Sheriff's deputy noticed the same vehicle being driven erratically and then parked behind a dumpster at a convenience store. The deputy checked the vehicle's license plate, learned the vehicle had been stolen, and called for backup. He watched as Harrison and Waggoner got out of the vehicle and walked into the store.

¶7 Once inside, Harrison attempted to make a purchase with a bank card in the name of Fidel C. but presented his own driver's license as identification, and store employees refused the sale. Harrison and Waggoner left the store, walked past the dumpster and the vehicle, and went down an alley where they were stopped and arrested by police officers. Officers later found Fidel's bank card, work identification card, and other cards in his name, as well as Harrison's driver's license, on the lid of the dumpster Harrison had passed. Fidel testified he had lost a wallet containing these cards.

¶8 Shawna was asked to come to the scene and, once there, identified her vehicle, stating that the bicycle in the back seat was not hers. She positively identified Waggoner as one of the men she had seen at the other convenience store just before her car was stolen. She could not positively identify Harrison but testified his appearance was consistent with that of the man she had seen with Waggoner the night before. Harrison stipulated that the damage to Shawna's vehicle exceeded \$2,000.

¶9 At the close of the state's case, Harrison moved for a judgment of acquittal on the charges of theft of a means of transportation, third-degree burglary, aggravated assault, and theft of a credit card. *See* Ariz. R. Crim. P. 20. He argued Shawna "had no idea who

stole” her vehicle, and evidence that he was driving the vehicle the following day might have been “proof of joyriding” but was insufficient to establish theft. And without proof of the theft, Harrison argued, there was no proof of intent to commit a felony inside the vehicle, as required to establish burglary. *See* A.R.S. § 13-1506(A)(1) (third-degree burglary of non-residential structure requires “intent to commit any theft or felony therein”); A.R.S. § 13-1501(12) (definition of “[s]tructure” includes vehicles). Similarly, Harrison maintained the state had failed to prove theft of Fidel’s credit card, citing Fidel’s testimony that he had lost his wallet and arguing “there are [two] million scenarios” that might explain Harrison’s possession of the card, “[b]ut one of them[,] by the witness’s own testimony[,] is not theft.” As for the aggravated assault, Harrison argued the state had failed to prove he had used a dangerous instrument to assault Doug because Doug had testified it was Waggoner—not Harrison—who had threatened him with a screwdriver.

¶10 In response, the state urged the trial court to deny Harrison’s Rule 20 motion and argued there was ample circumstantial evidence to support a finding of guilt beyond a reasonable doubt on all charges. The state theorized that Waggoner and Harrison had planned to rob Doug and that Waggoner’s use of a screwdriver to threaten Doug had been part of that plan. Thus, according to the state, Harrison could be found culpable as an accomplice in both the armed robbery and the aggravated assault with a dangerous instrument.

¶11 The state also argued the evidence supported a finding that Harrison had intended to permanently deprive Shawna of her vehicle, supporting Harrison’s conviction for theft of a means of transportation because the two men had abandoned the vehicle only after

they realized their apprehension was imminent. *See* A.R.S. § 13-1814(A)(1) (“A person commits theft of means of transportation if, without lawful authority, the person knowingly . . . [c]ontrols another person’s means of transportation with the intent to permanently deprive the person of the means of transportation.”). And the state maintained Harrison’s intent to commit a felony in the vehicle, required to prove the burglary charge, could be proven by either the theft of the vehicle itself or by the attempted robbery and assault of Doug the following day.

¶12 Finally, the state argued the evidence was sufficient for the jury to find Harrison guilty of theft of a credit card, which required proof that he controlled a credit card without the consent of the cardholder or issuer through theft, as theft is defined in A.R.S. § 13-1802. *See* A.R.S. § 13-2102(A)(1). Implicitly relying on § 13-1802(A)(4), the state maintained Fidel’s statement that he had lost his wallet did not preclude Harrison’s conviction for theft of a credit card. Section 13-1802(A)(4) provides:

A person commits theft if, without lawful authority, the person knowingly: [c]omes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to the person’s own . . . use without reasonable efforts to notify the true owner.

The trial court found the jury could make the findings required to convict Harrison of all charges based on the evidence presented and denied his motion for judgment of acquittal.

The jury later found Harrison guilty of theft of a means of transportation, third-degree burglary, criminal damage, attempted armed robbery, attempted aggravated robbery, theft of

a credit card, and taking the identity of another. The jury found Harrison not guilty of aggravated assault but guilty of the lesser-included offense of assault.

¶13 On appeal, Harrison asserts the trial court erred in denying his Rule 20 motion, quotes the arguments made by defense counsel, and cites the relevant standards of review. But he fails to state why he believes the court’s ruling was erroneous, and we see no obvious error in the court’s reasoning. As described above, the state presented substantial evidence of Harrison’s guilt—either as a principal or as an accomplice—for each of these crimes. The state had proceeded against Harrison on both theories, and the jury was properly instructed on accomplice liability. The evidence and reasonable inferences from that evidence were more than sufficient to support the verdicts. *See Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d at 914; *Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d at 458.

¶14 We conclude Harrison has not sustained his burden of establishing the trial court abused its discretion when it denied his Rule 20 motion. Accordingly, we affirm his convictions and the sentences imposed.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge